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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,424	04/22/2005	Kensaku Fujii	0080-0234PUS1	3734
2292 7590 10/18/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER MAKI, STEVEN D	
			ART UNIT 1791	PAPER NUMBER
			NOTIFICATION DATE 10/18/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/532,424	Applicant(s) FUJII ET AL.	
	Examiner Steven D. Maki	Art Unit 1791	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see Advisory Action Attachment. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 12-22.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Advisory Action Attachment.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Advisory Action Attachment

new issues

The new issues include:

- (1) in claim 12, deleting --smaller than--
- (2) in claim 12, adding --the first step and the second step have depths separately representative of different degrees of wear of a tire tread surface until tire rotation timing--
- (3) in claim 12, adding the language of --inscribed on or included in--
- (4) the dependency of claims 15-18 on claim 12 having the added language of --inscribed on or included in--
- (5) changing dependency of claim 20 from "claim 19" to --any one of claims 12 and 15 to 18--
- (6) in claim 21, deleting --smaller than--
- (7) in claim 21, adding the language of --inscribed on or included in--

The remaining changes do not constitute new issues.

remarks

As an initial matter, applicant acknowledges: "JP '608 discloses a tire tread having a stepped hole 17 with a tetragonal shape for indicating wear. When a first step of the hole disappears, a first rotation is carried out and when a second step of the hole disappears, a second rotation is carried out." (page 6 of after final amendment filed 10-1-07). Examiner adds and emphasizes that **the second lower step of Japan 608's hole is smaller than the first upper step of the hole 17.**

Applicant states that Soviet Union forms projections in the shape of a stepped pyramid located in a hole in the tread. Applicant is incorrect. Soviet Union discloses a pneumatic tire having projections. Soviet Union discloses a **first embodiment** (figures 1 and 2). In figure 1, the tread comprises projection 1 and projections 2 wherein projection 1 is shaped to have the form of an indicator and projections 2 are "tread elements". In other words, indicator 1 is located between projections 2 instead of in a hole of projection 2. Figure 2 shows the projections ("tread elements") having the form of "blocks". With respect to this first embodiment, the abstract of Soviet Union teaches "... the wear indicator has the form of a stepped pyramid, which can be formed by shaping one of the tread projections ...". Soviet Union also discloses a **second embodiment** (figure 3). In this alternative embodiment, Soviet Union shows a tread comprising two rows of "lugs" wherein the indicator is indicator within one of the lugs. With respect to this second embodiment, the abstract of Soviet Union states "... the wear indicator has the form of a stepped pyramid, which ... can have the form of an opening in one of these projections". Hence, Soviet Union teaches (1) a "projection" for use as an indicator having the shape of a stepped pyramid or (2) a "hole" for use as an indicator having the shape of a stepped pyramid. Moreover, Soviet Union shows using different shapes for a wear indicator having steps (figure 6) as being an alternative to using the same shapes for the steps of the wear indicator (figure 4, 5).

With respect to Shimura, applicant comments that the shape of the mark portion 20 changes gradually as the tread wears. More properly, Shimura teaches shapes such

as square, rectangle, circle or ellipse as being useful recognizable shapes of a hole for indicating wear.

With respect to French, applicant argues that none of the walls forming the slots can be fairly characterized as having a contour with curved lines and that there is no feature of the slots that can be fairly characterized as first and second steps. Applicant is incorrect. First, the walls of French's wear indicator comprise straight lines and curved lines. For example, see the letter "P" in figure 4. Second: The increased width of the rods 9 for forming the pattern of figure 4 (the second pattern including the word "STOP") relative to the width of the blades 8 for forming the pattern of figure 3 (the first pattern), defines a stepped configuration.

Applicant argues that one of the steps has a contour with straight lines and the other step has a contour with curved lines. Examiner adds that claims 12 and 21 fail to require the one step to have only straight lines and the other step to have only curved lines.

Applicant argues that the proposed combination of teachings of the prior art would not have been obvious. Examiner disagrees. Japan 608, Soviet Union, Shimura and French are all directed to an indicator for a tire tread. The secondary art to Soviet Union, Shimura and French provide ample suggestion to use different shapes at different depths of the wear indicator. One of ordinary skill in the art would have found it obvious to use different shapes (instead of the same shape) for the different depths of Japan 608's wear indicator to facilitate visual monitoring of the tire tread wear indicator - only the expected and predicted results being obtained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven D. Maki
October 12, 2007


STEVEN D. MAKI 10-12-07
PRIMARY EXAMINER